



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2020-0644; FRL-9164-01-R8]

Approval and Promulgation of Implementation Plans; Colorado; Denver Metro/North Front Range Nonattainment Area; Nonattainment NSR Permit Program Certification for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Colorado. The revision certifies that the State of Colorado has fulfilled, through a previous SIP revision, Nonattainment New Source Review (NNSR) Permit Program requirements under the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the Denver Metro/North Front Range (DMNFR) area. The State of Colorado submitted the appropriate certification to meet the nonattainment requirements for Marginal ozone nonattainment areas (NAAs) for the 2015 8-hour ozone NAAQS. The EPA is taking this action pursuant to sections 110, 172, and 173 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2020-0644, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6709, lang.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Ground-level ozone is formed when nitrogen oxides (NO_x) and volatile organic compounds (VOCs) react in the presence of sunlight. Referred to as ozone precursors, these two pollutants are emitted by many types of pollution sources, including motor vehicles, power plants, industrial facilities, and area wide sources, such as consumer products and lawn and

garden equipment. Scientific evidence indicates that adverse public health effects occur following a person's exposure to ozone. These effects are more pronounced in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. In 1979, in response to this scientific evidence, the EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS.¹ The EPA had previously promulgated a NAAQS for total photochemical oxidants.

On July 18, 1997, the EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours.² This standard was determined to be more protective of public health than the previous 1979 1-hour ozone standard. In 2008, the EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm.³ On October 26, 2015, the EPA strengthened the ground-level ozone NAAQS to 0.070 ppm, based on extensive scientific evidence about ozone's effects on public health and welfare.⁴ Effective August 3, 2018, the DMNFR area was designated as Marginal nonattainment for the more stringent 2015 8-hour ozone NAAQS.⁵ The DMNFR NAA is comprised of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson counties and portions of Larimer and Weld counties.⁶

CAA sections 172 and 182 identify requirements for ozone NAAs. Under section 172(c)(5) of the CAA Colorado is required to implement a NNSR Permit Program.⁷ On July 27, 2020, through the Colorado Department of Public Health and Environment (CDPHE), Colorado submitted a SIP revision titled, "2015 Ozone National Ambient Air Quality Standard (NAAQS) – Denver Metro/North Front Range Marginal Nonattainment Area Requirements" to satisfy, in

¹ Revisions to the National Ambient Air Quality Standards for Photochemical Oxidants, 44 FR 8202 (Feb. 8, 1979).

² National Ambient Air Quality Standards for Ozone, 62 FR 38856.

³ National Ambient Air Quality Standards for Ozone, 73 FR 16436 (March 27, 2008).

⁴ National Ambient Air Quality Standards for Ozone, 80 FR 65292.

⁵ Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018).

⁶ The EPA excluded part of Weld County from the DMNFR NAA, but that designation was remanded without vacatur in *Clean Wisconsin v. EPA*, 964 F.3d 1145, 1167-69, 1177 (D.C. Cir. 2020). To the extent the EPA's designation with respect to Weld County changes on remand, CO will be required to address the change in a future SIP revision.

⁷ Id. 7502(c)(5).

part, the NNSR permit program requirement under CAA section 172(c)(5).⁸ Colorado met the reasonable notice and public hearing requirements of CAA section 110(a) for the SIP revision through notice in the Denver Legal Post on May 23, 2020, and a public hearing held on June 18, 2020.⁹ Colorado's SIP revision also included a base year emission inventory and emission statement certification to satisfy additional Marginal nonattainment requirements under CAA sections 182(a)(1) and 182(a)(3)(B), respectively, which the EPA will act on separately from the NNSR certification that is the subject of this action.

II. Summary of SIP Revision

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources within a NAA and is required pursuant to CAA sections 172(c)(5) and 173.¹⁰

NNSR permit program requirements were adopted for the 2015 ozone NAAQS at 40 CFR 51.1314 by the implementation rule for the 2015 8-hour ozone NAAQS.¹¹ The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are located at 40 CFR 51.165.¹² These NNSR program requirements include those promulgated in the “Phase 2 Rule” implementing the 1997 8-hour ozone NAAQS, the 2008 Ozone NAAQS SIP implementation Rule, and the 2015 SIP Requirements Rule.¹³ Under the Phase 2 Rule, the SIP for each ozone NAA must contain NNSR provisions that:

- Set major source thresholds for NO_x and VOCs pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2);

⁸ Letter dated July 6, 2020, from Jill Hunsaker Ryan, Executive Director, CDPHE, to Gregory Sopkin, Regional Administrator, EPA, Region 8 (“CO SIP Revision”).

⁹ CO SIP Revision, Attachments 3 and 4.

¹⁰ 42 U.S.C 7502(c)(5), 7503.

¹¹ Final Rule, Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements, 83 FR 62998 (Dec. 6, 2018).

¹² 40 CFR 51.1314 includes new source review requirements for the 2015 Ozone NAAQS with reference to specific requirements at 40 CFR 51.165.

¹³ 70 FR 71611 (November 29, 2005); 80 FR 12164 (March 6, 2015); 83 FR 62998 (December 6, 2018).

- Classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3);
- Consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E);
- Consider certain increases of VOC emissions in extreme ozone NAAs as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F);
- Set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)–(C) and (E);
- Contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)–(2);
- Provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); and
- Set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9).¹⁴

Colorado's SIP Revision certifies that Colorado's existing NNSR permit program, covering the DMNFR NAA for the 2015 8-hour ozone NAAQS, is at least as stringent as the minimum requirements for NNSR permitting programs for the ozone NAAQS at 40 CFR 51.165.¹⁵ Colorado's SIP-approved NNSR program, established in the Colorado Code of Regulations (CCR), Regulation 3 Part D applies, in part, to any new major stationary source or major modification in a NAA which results in the emission of 100 tons per year or more of any NSR-regulated pollutant for which the area is nonattainment.¹⁶ Additionally, Regulation 3 Part D specifies that a stationary source that is considered major for VOCs or NO_x will be considered major for ozone.¹⁷ General emission offset requirements of at least a 1.1:1 in Marginal ozone

¹⁴ 40 CFR 51.165.

¹⁵ CO SIP Revision, Attachments 1 and 7.

¹⁶ 5 CCR 1001-5:3D.II.A.25.b.

¹⁷ 5 CCR 1001-5:3D.II.A.25.d.

NAAAs pursuant to CAA section 182(a)(4) are met by Regulation 3 Part D, section V.A.3.a(i)(a).¹⁸ The EPA last approved revisions to Colorado's SIP-approved NNSR permit program on May 3, 2019, in submitted revisions to Regulation 3, Part D.¹⁹ Furthermore, Colorado has previously submitted, and the EPA has approved on July 3, 2018, a SIP revision certifying that the State's federally approved NNSR permit program met the requirement in 40 CFR 51.1114 under the 2008 8-hour Ozone NAAQS, with the minimum SIP requirements for NNSR permit programs located in 40 CFR 51.165.²⁰ The EPA is proposing to approve Colorado's certification that the SIP-approved New Source Review permitting requirements in Regulation 3, Part D of the CCR meet the requirements located in 40 CFR 51.1314 and 40 CFR 51.165.

III. Proposed Action

We are proposing to approve the NNSR Permit Program certification provided in Colorado's SIP revision. The certified NNSR Permit Program was prepared in accordance with requirements of sections 172(c)(5) and 173 of the CAA and fulfills the specific minimum SIP requirements of 40 CFR 51.165. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹⁸ 5 CCR 1001-5:3D.V.A.3.a(i)(a).

¹⁹ Final Rule, Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 3, 84 FR 18991 (May 3, 2019).

²⁰ Final Rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 83 FR 31068 (July 3, 2018).

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: _October 25, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.